

From: [Price-Fay, Michelle](#)
To: [Emery, Katheryn D](#)
Cc: [Ward, Harold D](#); [Patel, Yogesh P](#); [Bandy, Jeremy W](#); [Board, Larry D](#); [Martinsen, Jessica](#); [Gable, Kelly](#); [Ottinger, Elizabeth](#); [Sincok, Jennifer](#)
Subject: RE: 2020 CSW draft permit
Date: Thursday, March 26, 2020 4:33:00 PM
Attachments: [2020_WVCGP_DRAFT_wEPAcomments_toWVDEP_3_26_2020.docx](#)
[2020_Draft_WVCGP_Fact_Sheet_wEPAcomments_toWVDEP3_26_2020.docx](#)

Hello Kathy,

Attached you will find informal comments provided by EPA based upon our review of the draft 2020 fact sheet and permit. A team of folks including representatives from the permits, TMDL and EPA's legal counsel worked together to review the draft documents in the timeframe requested. The comments provided include those that EPA is most concerned about addressing. Many speak to clarity and consistency. We kept a special eye out for those areas that lay on the fringe of issues such as antidegradation and backsliding. I also asked the team to address the issue that you specifically raised with me regarding the Liabilities Section. The bulleted list below includes highlighted areas of concern and the attached document provides comments and recommended edits via track changes.

- There are instances where there is inconsistencies between the permit and fact sheet documents. The mark-ups have comments throughout to show where this occurs. It is recommended that WVDEP be sure that the two documents are consistent and that the fact sheet complies with both 40 CFR 124.8 and 124.56 in that it explains the basis/rationale for permit conditions instead of reiterating the permit itself.
- There appears to be discrepancy in the permit and fact sheet about the antidegradation/Tier 3 waters language. The permit appears to allow for degradation of Tier 3 waters for projects that are less than one year, but does not provide any regulatory basis for this as if to say that since construction projects tend to be shorter in duration it is allowable to degrade waters for that short timeframe. WV state law requires protection of all waters at all times.
- The definition for "impaired waters" should be included in the permit and mirrored after EPA's CGP. It would also be helpful to include a definition for "sediment-related TMDL". If these two terms remain undefined or defined improperly, this would be a concern that EPA would need to formally address.
- A number of definitions have been added and/or deleted when compared with the 2/2019 permit that is in effect. We recommend that the two documents be compared to ensure that all required terms have been properly defined.
- In our objection to the permit modification, we discussed the need to include at least a narrative description of post-construction requirements in the permit. This requirement also applies to this draft 2020 permit. The comments included in the attached document include this recommendation to rename the section of the permit to which this would apply to ensure that this requirement is met.
- This draft permit does not specify the requirements for GPP and no reason/rationale was provided for this change.
- We also focused on the section raised by WVDEP focused on the Liabilities Section and provided some edits to that address the question.

Finally, we did want to share that the format of the 2/2019 permit in effect appeared to have better flow. While I understand the goal for these draft documents, there are instances where the draft may present issues with compliance and enforcement.

Please let me know if you have any questions or concerns. We would be happy to have a conference call to walk through any of our comments so that you are clear on the meaning and intent. We are cognizant of WVDEP's goal to develop a permit that meets that statutory and regulatory requirements; is clear enough for the industry to understand and would not result in an appeal that would impede West Virginia's ability to manage discharges subject to this general permit.

Sincerely,
Michelle

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From: Emery, Katheryn D <Katheryn.D.Emery@wv.gov>

Sent: Thursday, March 12, 2020 9:57 PM

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Subject: 2020 CSW draft permit

Michelle,

I've attached the draft copy of the 2020 Construction Stormwater General Permit and Fact Sheet for your review. We will be publishing this document for public comment at a later date. At this point, I am just requesting feedback to see if there are any issues that we may be able to discuss prior to public comment. If you have any questions, please just ask. I am asking that you provide comments by March 27.

Kathy

****Please note new number****

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